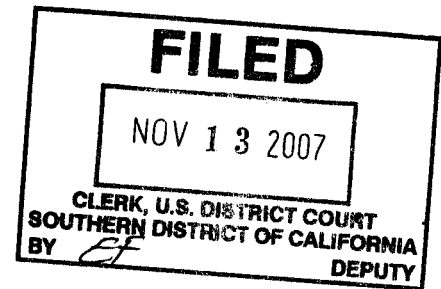


1 KAREN P. HEWITT
United States Attorney
2 JOSEPH J.M. ORABONA
Assistant United States Attorney
3 California State Bar No. 223317
United States Attorney's Office
4 Federal Office Building
880 Front Street, Room 6293
5 San Diego, California 92101
Telephone: (619) 557-7736
6
7 Attorneys for Plaintiff
UNITED STATES OF AMERICA



8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	Magistrate Case No. 07MJ8884
)	07CR3096-BEN
12 Plaintiff,)	
)	STIPULATION OF FACT AND JOINT
13 v.)	MOTION FOR RELEASE OF
)	MATERIAL WITNESS(ES) AND
14 KEVIN EMMANUEL)	<u>ORDER THEREON</u>
15 ALVARADO-MARTINEZ,)	
)	
16 Defendant.)	(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Joseph
19 J.M. Orabona, Assistant United States Attorney, and defendant KEVIN EMMANUEL
20 ALVARADO-MARTINEZ, by and through and with the advice and consent of defense counsel,
21 Carolyn Oliver, Esq., that:

22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
26 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
27 and (v)(II).

28 //

JJO:jam:11/13/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **November 28, 2007**.

6 4. The material witnesses, Eduardo Castro-Avila, Alfonso Garcia-Aguilera, and
7 Francisco Jimenez-Garcia, in this case:

- 8 a. Are aliens with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 October 25, 2007;
11 c. Were found in a vehicle driven by defendant near Calexico, California and
12 that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful
13 right to enter or remain in the United States;
14 d. Were paying or having others pay on their behalf an unknown amount to
15 \$1,200 to others to be brought into the United States illegally and/or transported illegally to their
16 destination therein; and,
17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- 23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
24 substantive evidence;
25 b. The United States may elicit hearsay testimony from arresting agents
26 regarding any statements made by the material witness(es) provided in discovery, and such testimony
27 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest

1 of (an) unavailable witness(es); and,

2 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
3 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
4 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
5 waives the right to confront and cross-examine the material witness(es) in this case.

6 6. By signing this stipulation and joint motion, defendant certifies that defendant has
7 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
8 further that defendant has discussed the terms of this stipulation and joint motion with defense
9 counsel and fully understands its meaning and effect.


10 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
11 immediate release and remand of the above-named material witness(es) to the Department of
12 Homeland Security for return to their country of origin.

13 It is STIPULATED AND AGREED this date.

14 Respectfully submitted,

15 KAREN P. HEWITT
16 United States Attorney

17 Dated: Nov 13, 2007

18 
JOSEPH J.M. ORABONA
Assistant United States Attorney

19 Dated: Nov. 13, 2007

20 
CAROLYN OLIVER
Defense Counsel for Kevin Alvarado-Martinez

21 Dated: 11/13/07

22 
KEVIN EMMANUEL ALVARADO-MARTINEZ
23 Defendant

ORDER

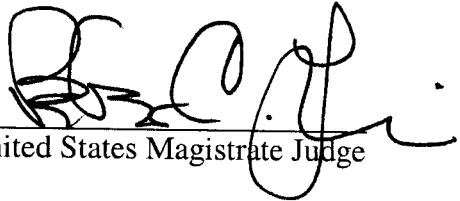
Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 11-13-07.


United States Magistrate Judge